

# THE CLASSICAL WEEKLY

Entered as second-class matter November 18, 1907, at the Post Office, New York, N. Y., under the Act of Congress of March 1, 1879

VOL. VIII

NEW YORK, MARCH 20, 1915

No. 20

## GREEK LITERATURE IN ENGLISH TRANSLATIONS<sup>1</sup>

The excellent article of Professor Penick on Greek Poetry in English Translations in *THE CLASSICAL WEEKLY* 8.115-117 makes one reflect that, with all the opposition to Greek in recent years, there has prevailed a very decided desire to know something about the Greeks and their contributions to literature, art, philosophy, political science, and civilization in general. Students still want Greek, but they want it diluted. This I believe to be due in part to the fact that our Colleges are being crowded to-day with boys who forty years ago would never have gone to College, and the College has been forced to come down to their level, to the level of purely vocational studies, to the level in many cases of the boy who merely wants the A.B. label, but really cares nothing about a sound and thorough education (see the article, *The Passing of the Educated Man*, in *The Unpopular Review*, 3 [1915], 76-87).

There are, however, many serious students who realize too late that Greek is essential to other things as well as to an understanding of English literature. They want to learn something about the intellectual content of Greek literature, even though it be too late to begin the study of the language. After a man enters College, there are so many other studies he should pursue, that he rarely has time to begin Greek. It is better to learn Greek late in life than not at all; but the whole modern tendency to begin Greek, like Hebrew, after one enters College, as indicated by the increasing number of Colleges offering beginners' Greek, is wrong. Boys should begin Greek when they are young, when their memories are good and their minds are not mature enough for philosophy and the advanced sciences. Mrs. Stoner, in her recent book on *Natural Education*, would go so far as to have children learn Greek forms in infancy. It is not at all hard for a very young boy under the guidance of a fairly good teacher to learn Greek as a language. When this is done the objection that the student has no time for Greek falls away completely.

It is to meet the demand of those who have not begun Greek early and of belated realizers of the value of

Greek thought that most Colleges are now offering courses in the history of Greek literature, in English translations. I have attempted no complete list, but have incidental knowledge that such courses are given at Bates, Bowdoin, Colby, Columbia, the University of Maine, Harvard, Pennsylvania, Princeton, Chicago, Wellesley, Goucher, Ohio State University, University of Texas, Oberlin, Kansas, Iowa, Nebraska, Oregon, Pittsburgh, University of Washington at Seattle, Beloit, Western Reserve, and very many other places—especially in the Middle West and West. At Columbia there are courses on *Classical Influences in Elizabethan Literature* and on the *Development of the Drama*, given in the Department of Comparative Literature. At Cornell Professor Cooper gives courses on *English Translations of Greek and Latin Classics*. In England too, as at the University of Birmingham, courses in Greek literature in translation are given by classical instructors (compare Sonnenschein's interesting article, *An Experiment in University Education*, in *The Classical Review* 22 [1908], 169 ff.). Even in High Schools such courses are given with success (see *The Classical Journal* 4 [1908], 124 ff.). These sometimes limit themselves to the Greek poets or to one department of Greek literature, such as the drama, but not seldom they trace the development of Greek literature from Homer to Theocritus. So for some years I have been giving such a course to Juniors and Seniors of Johns Hopkins, using as a text book, because of the many selections from English translations, Capps's *From Homer to Theocritus*. I take up first the Greek epic with readings in the standard translations of Homer and Hesiod, in Matthew Arnold's *Essay on Translating Homer*, in Gladstone, in Andrew Lang's *Helen of Troy* and his versions of the Homeric Hymns, in Shelley's *Hymn to Mercury*, and in Walter Pater's *Greek Studies*. Then I pass on to the iambic, elegiac, and lyric poets, with readings in Symonds's *Greek Poets*, and with special emphasis on those who, like Sappho, have most influenced English literature. Then follow the tragedians and the comedians, with readings of Browning's or Fitzgerald's translation of Aeschylus's *Agamemnon*, Shelley's *Cyclops*, Browning's *Balaustion and Aristophanes's Apology*. Emphasis is always laid on the relation of Greek literature to literature in general, and to English literature in particular. In reading Mrs. Browning's *Prometheus*, to take a single example, the influence of Aeschylus's *Prometheus on Quinet*, Vol-

<sup>1</sup>This article (designed originally as an editorial) can only touch on the subjects mentioned, and can not be exhaustive; but it is hoped that it will stimulate discussion, and I am sure that Professor Knapp will be glad to have communications on the subject of Greek Literature in English, or on Latin Literature in English, which I have not treated, although the two subjects belong together.

taire, Goethe, Shelley, Swinburne, Byron, Longfellow, etc., is discussed. Then I have tried to give the students some notion of the Greek orators, historians, and philosophers, and, with Jowett's excellent translations of Thucydides and Plato and Aristotle's Politics, and Bywater's or Butcher's Aristotle's Poetics, much can be accomplished in this line also.

I have always been obliged, for practical reasons, to end my courses with an account of Theocritus and his age, using Andrew Lang's translation and Matthew Arnold's version of the Fifteenth Idyll, Leigh Hunt's rendering of Moschus's Lament for Bion, and Mrs. Browning's Bion's Lament for Adonis. The ideal course would continue into Hellenistic literature and its influence on Roman literature; the student should also have a similar course in Roman literature, such as are given in many American colleges and by my colleague, Professor Kirby Flower Smith, as a companion to the course in Greek literature.

Such courses as those just mentioned seem to me to be valuable and to give some knowledge of Greek literature, although necessarily the knowledge will not be as intimate as that of the student of the original; but even students who know Greek say they get by the methods mentioned a survey of the whole field in a way they cannot compass in the regular Greek courses, where they construe so many lines of Greek per day (compare *THE CLASSICAL WEEKLY* 8.115); and they maintain that they acquire a considerable appreciation of that part of English literature which is based on classical models and of the influence of the Greeks on later literature and civilization. I know that I myself gained a great deal of useful classical information and acquired a considerable knowledge of the place of Greek literature in other literatures from courses in the Greek Epic in English and the Greek Drama in English which I took under Professor Shorey some years ago, when a Department of Literature in English was started at the University of Chicago. I do not mean to say that such courses are an equivalent substitute for strenuous discipline in the Greek language, probably the most important production of the Greek mind. I do not believe that without a first-hand knowledge of Greek literature one can read with the best appreciation English literature, e. g. Spenser, Milton, Pope, Shelley, or Tennyson; and I should make a first-hand acquaintance with Greek and Latin a prerequisite for every important literary professorship of English (compare Lane Cooper on The Value of Greek in Study of English, *THE CLASSICAL WEEKLY* 6.73; also The Teaching of English and The Study of the Classics, *Educational Review*, January, 1915, 37 ff.). Such courses, then, as I have mentioned should be given by teachers of Greek who also have some acquaintance with English and the classical echoes in English literature, with the literary commentaries on the Classics, such as Shorey's Horace, Smith's Tibullus, etc., with recent books like Finsler's Homer in der Neuzeit, Süss's Aristophanes, Kerlin's Theocritus, Hirzel's Plutarch, and others; with the articles of

Mustard (compare also, his Classical Echoes in Tennyson, his editions of Mantuan and Sannazaro), Shorey, Jackson, Ogle, Norlin, Van Hook, and many others. At Princeton, where such courses are given by Professor Osgood of the English department, the preceptor is Professor Magie of the Classical department—a fine combination much to be commended. Such teachers will be able to communicate to their students part of their own feeling for the original Greek.

Teachers of Greek should not feel like the professor in a State University of the Middle West, who said that "he had not yet fallen so low" as to give a course in Greek literature through translation (see the excellent article of Professor Bill, The Business of a College Greek Department, in *The Classical Journal* 9 [1913], 111 ff.; compare also, *ibid.* 4 [1908], 17 ff., A New Greek Course). Such professors, who are too strictly linguistic, would learn much themselves about Greek literature, and would have their intellectual areas broadened by giving such instruction, for which the materials and methods are the same as those of a course in English literature. Some things can be learned from the literary translations better than from the original Greek. Some professors of Greek art have even recommended the study of Greek casts as a better introduction to Greek art than the study of originals. Greek scholars such as Butcher, Gildersleeve, Jebb, Mackail, Moulton, Gilbert Murray, Shorey, Wilamowitz, and many others do not hesitate to give lectures on Greek literature to audiences composed mainly of people who do not know Greek (compare The Turnbull Lectures at the Johns Hopkins University by Jebb and Shorey; The Columbia Lectures on Greek Literature, published in 1912; English Literature and the Classics [Oxford, 1912]—a series of lectures collected by G. S. Gordon, a book with a somewhat inaccurate title, since only the lectures on Theophrastus and Ovid do any justice to it; that on Greek Romance, by Phillimore, takes no account of the influence of the Greek Romances in Elizabethan prose fiction, a subject worked up by Wolff, surely essential to a book on English literature and the Classics. See the review of the book, by Professor Van Hook, in *THE CLASSICAL WEEKLY* 8.125-127). The production of Greek plays in English as well as in the original, which has become so frequent, also helps to keep alive the knowledge of Greek literature (see the articles by D. D. Hains, Greek Plays in America in *The Classical Journal* 6.24 ff; and The Presentation of Classical Plays, *The Classical Journal* 9.189-198, 251-260, 344-353). Students who know no Greek will in this way receive second-hand but useful knowledge. If such courses are taught so as not to discourage the study of the Greek language, some even may be led to study the original. It is an interesting fact that many seem to want to use literal prose translations and to get as near the original Greek as possible. There is, of course, much danger of slipshod superficiality and of teaching which degenerates into snap and so-called cultural courses in which the professor lectures and does

all the work. But if the instructor is a Greek scholar who can show the difference between the translation and the original, and if the students are given prescribed reading and made to hand in abstracts of the works read, there really will be valuable results to the department of English Literature as well as of Greek and other subjects. No one can fully appreciate the Greek spirit, especially as it shines out of Greek poetry, unless he studies it in the original<sup>2</sup>. Nevertheless, through translations one can be admitted, as my colleague Professor Greene of the English Department has said in an excellent article on *The Nurture of our Youth in the Johns Hopkins Alumni Magazine* for November, 1914 (3.7-16), "to a speaking acquaintance, if not to intimacy, with the masterpieces of the world's literature, and may drink from the silver cup, if not from the golden original".

It has always seemed strange to me that the practical value of the study of Greek in creating executive and administrative power is so seldom realized. If some one would make an inductive examination of the favorite study of each of the strongest College Presidents of the past fifty years, he would probably be surprised at the results. He would find that not philosophy or history had the strongest claims to productiveness in the line of practical force, but rather Greek, or even Hebrew or the study of the Bible. One recalls President Harper of Chicago. He was a veritable Napoleon of organized education. Yet he was nourished on Hebrew roots. One thinks of Benjamin Ide Wheeler, William Peterson, James H. Kirkland, and many others. Professor Manatt, who recently died, was formerly Chancellor of the University of Nebraska and Consul at Athens. Professor Capps was formerly a Dean at the University of Chicago and is well-known for his organizing and executive ability. Even those who appear to be specialists in other lines often began with a solid foundation in Greek; so President Hadley of Yale was son of a famous Greek scholar and was thoroughly trained in Greek. President Butler of Columbia has written articles on classical subjects (compare *The American Journal of Philology* 6.349; also papers presented to *The American Philological Association*). Dean Griffin of Johns Hopkins is an excellent classical scholar. I might cite many more instances and quote from business men, such as James Loeb, William Sloane, and many others, to show that a training in

Greek is valuable for business life (compare Kelsey's *Latin and Greek in American Education*, 210 ff.). *THE CLASSICAL WEEKLY* 8.47 cites the case of Gardiner M. Lane, who was extremely successful as a business man and as an administrator. He was the son of a well known classical professor, and had a fine classical education himself. Fairfax Harrison, President of the Southern Railway, also had a sound classical education and finds time still to read the Classics (see his very scholarly address before the Virginia Classical Association, Nov. 27, 1914, printed under the title, *The School of Hellas*). Many other such cases could easily be found of men trained in the Classics who have made a success in business.

Now, it is far from the real fact to say that such men were gifted by nature with great executive power and attained to high administrative positions in spite of their incidental love of Greek or Semitic roots. The real fact is just the contrary. I believe substantiating testimony could without difficulty be collected to prove my contention. The reason is rather obvious. The great Greeks, for example, were without encyclopedias. They could not look up things in the *Britannica*, in *Hastings*, in *Daremberg-Saglio*, or *Pauly-Wissowa*. They could not select from classic examples the right meters for their poems. They had to dig out these facts and invent and construct their meters for themselves. The original power which was required to do this, the grace and beauty which crowned their efforts vibrate and shine through all their productions. The man who studies them is in touch with the original mental symmetry, flexibility, and dynamic power. He not only gets the noblest thought in the noblest forms, but in the original forms. In oratory, in literature, in generalship, in every department of life the man who stands at the original fountain and stoops and drinks its primal waters imbibes a life and beauty which farther down stream has deteriorated and lost its first full intellectually intoxicating and sobering power. What makes a strong man in practical life? Personal originality and active powers to grapple with new problems. Where can the man who seeks these qualities find intellects who have exhibited them most independently and forcefully? I answer, among the old Greeks. To study them well is to drink of the fountain of their intellectual power. Again, where can one find a vehicle of expression whose study will best discipline his own powers of expression? I answer, in the language of the men who were the first and greatest masters of expression. It is, of course, impossible to make a silk purse out of a pig's ear. But if a man's mind has silk fiber in it, and if he wants to acquire capacity of soul, treasure of thought, and grace of expression to contain his treasure and hold it together in meshes of beauty, let him study Greek—study it long and hard. If it is too late to do that in the original, let him do it in the best renderings his native tongue affords. Then in later years he will slowly but surely

<sup>2</sup>Compare a well written and valuable article in *The Atlantic Monthly* for December, 1914, 778 ff., *Our Classical Recollections*; the brilliant article of Shorey, *The Case for the Classics*, *The School Review*, 18, 585-617 (reprinted in Kelsey's *Latin and Greek in American Education*, 303-343); and the recent *University of Colorado Bulletin*, 14, 9, *Latin and Greek in Education*, where, on page 6, Professor Gayley is cited as saying: "Upon a first hand acquaintance with Greek and Latin classics, the appreciation of English and all modern literature depends. The knowledge of the history of institutions and of art depends upon a knowledge of the classics. The knowledge of philosophy depends upon a knowledge of the classics. No better training in logical processes was ever devised than the philological discipline of the classics. No discipline more thoroughly systematized, more uniform, more definite, more rigorous. No better training in the use of one's own language than translations from the classics. No better school of poetry or of oratory than the classics. No better gallery of lives—which to contemplate is to know that virtue is its own reward and vice its own penalty".



discover at what fountain he has found his best power of achievement. It will be the Pierian one.

THE JOHNS HOPKINS UNIVERSITY. DAVID M. ROBINSON.

### THE PROSECUTION OF MILO

#### A CASE OF HOMICIDE, WITH A PLEA OF SELF-DEFENSE

(Concluded from page 150)

Before proceeding to the main line of defense, Cicero meets the three extra-legal points that had been raised by the prosecution to influence the minds, and the votes, of the jury. The first was that one who confessed that he had committed homicide should be punished by death. Now, an act of homicide, under certain circumstances, is allowed to go unpunished. Under these circumstances the homicide is said to be 'justifiable' or 'excusable'.

Justifiable homicide may be defined as the intentional killing of a human being, done without malice, in the performance of a legal duty, or for the advancement of public justice. Excusable homicide may be defined briefly as the killing of a human being either unintentionally, as by misadventure, or intentionally but in self-defense<sup>34</sup>.

The American criminal law justifies homicide, apart from cases of self-defense, only when committed (1) by an officer of the law in execution of a writ or warrant, (2) by a private person seeking to prevent the commission of treason, and (3) by an officer or private person in obedience to the commands of the government<sup>35</sup>. Cicero cites several cases of justifiable homicide. Horatius slew his sister, Ahala killed Spurius Maelius, Opimius caused the death of C. Gracchus, Marius that of Saturninus, and the senate had voted death against the associates of Catiline. In all these cases, except the first, the circumstances fall within the definition of the American law. Spurius Maelius was killed in resisting arrest; the other instances of homicide can be construed as examples of homicide in obedience to the commands of the government. The case of Horatius was very different. He was condemned by the courts to capital punishment, but upon appeal to the people his punishment was made as light as possible, owing to unusual extenuating conditions<sup>36</sup>. The act was held, nevertheless, to be a crime. Cicero then mentions a provision of the XII Tables, to the effect that homicide is justifiable in certain cases of larceny<sup>37</sup>. If it is permissible to slay a *fur nocturnus*, he argues, how much more reasonable is it that one be permitted to slay one's assailant.

<sup>34</sup>A. E. E. L. 21. 201.

<sup>35</sup>Abridged from May, *The Law of Crimes*, 60-69. A. E. E. L., 21.202 gives the following—A. Circumstances justifying homicide: (1) the execution of a sentence of death, (2) resistance to making an arrest, (3) prevention of the escape of a prisoner from prison by one having lawful custody of him, (4) prevention by an officer or private citizen of felony. B. Circumstances excusing homicide, (1) accidental killing, (2) self-defense. A clear statement of the whole matter may be found in the Penal Law of New York, Chapter 40 of the Consolidated Laws of New York, as amended 1909, Art. 94, § 1055.

<sup>36</sup>Livy 1. 36; Dionysius 3. 22.

<sup>37</sup>Milo 9; Digest 48. 8. 9; Bruns, *Pontes* 30.

This is a logical argument, but seems irrelevant in this connection, until one notices how closely the collocation corresponds to the section of the Penal Law of New York, according to which homicide is excusable "in the actual resistance of an attempt to commit a felony upon the slayer, in his presence, or upon or in a dwelling or other place of abode in which he is"<sup>38</sup>. The legal right of a citizen to resist an attempt at felony, including larceny, upon his dwelling is linked by the Legislature with the right to resist an attempt upon his life. So Cicero argues that, if resistance of larceny was recognized by the Decemvirate, in the enactment of the XII Tables, as justifying homicide, there must be many circumstances where homicide is justifiable<sup>39</sup>. Thus he ingeniously turns an apparently irrelevant point to the advantage of his contention.

From instances of justifiable homicide he passes to cases of self-defense. The Roman criminal code does not seem to have been so explicit on this point as the American law. Under the American law a man may protect himself from death or serious bodily harm by the use of such force as is necessary, and may even kill as a last resort.

The law of self-defense is founded on necessity, and in order to justify or excuse the taking of life upon this ground it must appear that the slayer had reason to believe, and did believe, that he was in danger of his life or of receiving great bodily harm; and it must also appear that he believed as a reasonable man that in order to avoid such danger it was necessary for him to take the life of the deceased. The danger of losing life or receiving great bodily harm must be real, or honestly believed to be so, at the time, and on reasonable grounds; the danger must be apparent and imminent, and existing at the very time, or believed to be so, and on reasonable grounds. . . . But it is his duty to retreat to safety if such retreat is possible<sup>40</sup>.

While we cannot hesitate to believe that the principle of the Roman law was the same as that of the American law, Cicero fails to cite definite statutes bearing on the question. But he states emphatically that the unwritten law<sup>41</sup> gave the right of self-protection against plotters and robbers. This was intended to include simple battery, as well as assault with weapons on the part of robbers and enemies. He cites a case to substantiate his point. An assault was committed upon the person of a young man in the army of Marius by an officer<sup>42</sup>. The person assaulted killed his assailant, and was acquitted by Marius after investigation. Inasmuch as a general, while on a campaign, had judicial powers, this decision would have the same value in establishing a precedent as the decision of a court in Rome. But many similar cases must have

<sup>38</sup>Consolidated Laws, Art. 94, § 1055.

<sup>39</sup>Compare A. E. E. L. 21. 210: "the question of justification is to be determined by the inquiry whether under the circumstances of the particular case the taking of a human life was reasonably and apparently necessary to accomplish the act the performance of which constituted the legal duty or the privilege of the person accused".

<sup>40</sup>A. E. E. L. 25. 258, 271.

<sup>41</sup>Milo 10: *non scripta, sed nata lex*.

<sup>42</sup>Milo 9.

arisen in Rome itself, and it seems strange that Cicero did not choose one of them for citation. The explanation is, apparently, that cases were not made a matter of court record, as in modern times, and Cicero and other forensic orators contented themselves with citing famous cases connected with great historic personages, as best known both to themselves and to their audience. Cicero then tries to make the situation clear by showing that, in order to a conviction for murder, the law intended that malice be proved to have been present. He does not name the law, but says that the law did not prohibit the carrying of weapons, but that carrying weapons for the purpose of inflicting death upon a certain person proved malice. In cases of homicide malice must be shown to exist, or a conviction for murder is illegal. "Malice is the chief characteristic, the grand criterion, by which murder is to be distinguished from other species of homicide"<sup>21</sup>.

The prosecution had contended that the feeling of the senate was hostile to Milo. This is not so, Cicero maintained, but homicide is at all times a serious matter and contrary to the welfare of the state. The senators, including Cicero, condemned the act, but felt that the decision as to the facts, and the law relating thereto must rest with the courts. The real opinion of the senate was that the existing statutes and the existing courts were sufficient to meet the case. This was proved by the fact that the senate had voted favorably upon a bill involving two provisions: (1) that the case be tried by existing laws, and by existing courts, but out of turn, and (2) that the recent rioting in the city be condemned<sup>22</sup>. The senate would have directed that the case be tried under the *Lex Plautia*, a bill prescribing penalties for pillaging houses, occupying a public place in arms, and assembling armed men to overawe the senate or the magistrates<sup>23</sup>. Upon motion of Fufius the two parts of the measure were considered separately, and then the first part was vetoed by Plancus. There was no alternative but to create an extraordinary court in accordance with the motion of Pompey. Cato and Cicero had repeatedly spoken against the necessity for an extraordinary court, or unusual procedure, as proposed in Pompey's bill.

Nor did the action of Pompey show any hostility toward Milo. No investigation was necessary of the killing of Clodius, nor of the person causing the death. Therefore, the only point in Pompey's mind must have been that Milo should have the opportunity of showing justification for his act<sup>24</sup>. This is a very neat point, and sounds extremely plausible. But it is to be remembered that the prosecution had used the same point to show that there was fear that Milo would escape conviction if brought before an ordinary

jury. Clodius had slain Papirius on the Appian Way; in the city he had attempted to assassinate Cicero, and even Pompey himself. If these situations needed no extraordinary court, why did the case of Milo require one? Cicero replies that it was because Clodius was an enemy to Pompey, but Milo was his friend, and Pompey wished in this case to have absolute impartiality, and relief from any suspicion of favoritism<sup>25</sup>. Cicero says this, partly to flatter Pompey, and partly to counteract the effect of similar claims by the prosecution. But the relations of the parties concerned during the preceding months, or years, indicate that Cicero was not justified in claiming that Pompey had any friendly feeling for Milo<sup>26</sup>.

The main line of argument adopted by Cicero is that Milo killed Clodius in self-defense. A speech had been written by Brutus, and given to Cicero, basing the case solely upon the ground of justifiable homicide. The death of Clodius was beneficial to the state, and Milo should be acquitted, irrespective of the cause of the quarrel, or the occasion for it<sup>27</sup>. This would be in accordance with the opinion expressed by Africanus on the legality of the killing of Tib. Gracchus. Such a plea would have no chance of success in a modern court<sup>28</sup>, and it is very doubtful whether it could have been sustained legally in Rome. At any rate, Cicero rejected the speech of Brutus, and determined that the plea of self-defense could be more easily sustained<sup>29</sup>. His method of handling that line of defense is extremely interesting on account of its close resemblance to similar pleas in modern courts.

Cicero divides his argument into five sections: (1) that Clodius had a motive for slaying Milo, Milo had none for slaying Clodius, (2) that Clodius had formed a plot to kill Milo, (3) that the place where the fight took place showed that Clodius had planned such a meeting, (4) that Clodius was prepared for a fight, Milo was in a condition of unreadiness, and (5) that the progress of the fight proved provocation on the part of Clodius.

(1) In considering the first topic, Cicero gives much attention to his favorite means of creating a good impression of his client. He reviews the whole public career of the two men, and makes it seem extremely probable that Clodius was a man who would strive to put his political enemy out of the way, but that Milo could not be suspected of doing anything so outrageous, or so unlawful<sup>30</sup>. Then he passes to the

<sup>21</sup>Milo 21.

<sup>22</sup>Milo 67-68 makes an elaborate effort to prove that Milo was not an enemy of Pompey.

<sup>23</sup>Asc. 42.

<sup>24</sup>A. E. E. L. 21. 103: "But an innocent or even commendable motive, though it may reduce the grade of the offense, can never in law affect the criminality of a homicide which the circumstances do not themselves justify or excuse".

<sup>25</sup>Milo 23.

<sup>26</sup>Milo 23-75 passim. Compare A. E. E. L. 25. 281: "As a general rule, evidence showing the general reputation of the deceased as a dangerous and violent man is inadmissible. But when there is evidence showing or tending to show that the defendant acted in self-defense, under reasonable apprehension that his life was in danger, evidence of the bad character of the deceased in this respect is admissible if it appears that the defendant knew of the bad character of the deceased at the time of the homicide".

<sup>27</sup>A. E. E. L. 21. 135. "A malicious killing is where the act is done without legal justification, excuse, or extenuation": *ibid.* 133. The Digest repeatedly insists upon the necessity of proving malice (*dolo malo*).

<sup>28</sup>Milo 14; Asc. 44. 45.

<sup>29</sup>Sallust, *Catiline* 31.

<sup>30</sup>Milo 15, 71.

question of immediate incentive. Clodius would naturally have been a candidate for the praetorship in the preceding year, but, owing to the long delay in holding the elections, he found that if elected he would be able to hold office for only a portion of the year. He decided, therefore, to postpone his candidacy for one year. Unfortunately for his plans, he learned that Milo was likely to be elected to the consulship for the same year. With Milo holding the consulship he could not hope to carry out the measures he had proposed for his praetorship. He then stated openly that Milo should be killed. He saw that Milo was sure of election, and said that, while the consulship could not be taken from Milo, his life could be taken<sup>73</sup>. On the other hand, Milo had no grievance against Clodius, for the opposition of Clodius was of advantage to the candidacy of Milo<sup>74</sup>. This is good legal reasoning, and strengthening to his case, in accordance with the following rule:

In order to show the existence of malice, it is not necessary to prove a motive for the homicide. . . . Evidence of motive is always admissible, however, for the purpose of proving malice, and the absence of evidence suggesting a motive may be considered in favor of the accused<sup>75</sup>.

(2) Clodius, reasoning in this manner, formed a plot to slay Milo. He knew that Milo must go to Lanuvium on January 18, to instal a petty officer in the town, for Milo was dictator of Lanuvium<sup>76</sup>. That Clodius formed such a plot was clear from the fact that he had told Favonius that Milo would be dead in three, or at most four, days<sup>77</sup>. This is also sound legal reasoning, according to the modern doctrine:

Evidence of threats by the deceased is generally inadmissible, but evidence of communicated threats is admissible where there is evidence tending to show self-defense; because in connection with an overt act or demonstration on the part of the deceased such evidence shows the reasonableness of the accused in believing himself to be in that danger which justifies the taking of human life in self-defense; and evidence of threats, whether communicated or not, is admissible when the evidence leaves it doubtful which of the parties began the fatal difficulty<sup>78</sup>.

In pursuance of this plan he brought to Rome from the Apennines a band of slaves, 'lawless and barbarous men'<sup>79</sup>. With these he left Rome on January 17, to go to his estate at Bovillae, although his presence was much needed in Rome to further his canvass for office<sup>80</sup>.

(3) On the following day the fight took place. Milo had been present at a meeting of the senate during the morning. Then he went home and prepared for his journey. Shortly after noon he set out for Lanuvium,

at an hour when one would expect that Clodius would already have returned to Rome, had he intended returning on that day<sup>81</sup>. The two parties met near Bovillae, close to the estate of Clodius. Here Clodius had a thousand men employed, and these he could call upon for assistance in case of need<sup>82</sup>. All the circumstances of the journey of the two men, and especially their meeting in this particular spot, proved beyond doubt that the fatal difficulty and the place where it should occur had been arranged by Clodius with great care.

(4) It was evident, also, that Clodius was ready for a fight, while Milo was not ready. Clodius was traveling on horseback and without baggage<sup>83</sup>. It was very unusual for him to travel in this simple fashion, and very unusual for him to be unaccompanied by his wife. On the other hand, Milo was traveling in a litter with his wife, quite unprepared for an emergency. He was wrapped in a large cloak, which rendered him unable to defend himself, and much more unable to take the offensive. He was also hampered in his movements by having a considerable amount of baggage, and by having many women and children in his train<sup>84</sup>. The contrast between the readiness of the two men was most marked<sup>85</sup>.

(5) In the progress of the fight Clodius was the aggressor. His followers attacked Milo from higher ground, while Milo's followers merely defended themselves<sup>86</sup>. Finally Clodius spread the report that Milo was dead, thinking that Milo's followers would stop fighting, and probably take to flight. He could then easily despatch Milo. But the report only enraged the friends of Milo, and thinking their leader was dead they immediately took revenge upon the assumed slayer, 'without the command, knowledge, or presence of their master'<sup>87</sup>. Each side claimed that the other was the aggressor, for this is a most essential part of the plea.

One who takes the life of his adversary in a conflict in which he is the aggressor, or which is provoked or brought about by his unlawful or wrongful act, is not excusable on the ground of self-defense. A man can not justify the killing of another by a pretence of necessity, unless he was without fault in bringing that necessity upon himself<sup>88</sup>.

After Cicero had dealt at such length with the question of self-defense, he endeavored to show that, even if there had been no immediate provocation, the slaying of Clodius would have been a thing highly desirable from the standpoint of the welfare of the state<sup>89</sup>. In this section of the speech he probably utilized the argument prepared by Brutus. It must

<sup>73</sup>Milo 24-26.

<sup>74</sup>Milo 34. Milo 32 has made famous the ancient question of Cassius, when a matter of motive arose, viz. *cui bono*, 'for whose advantage?'

<sup>75</sup>A. E. E. L. 21. 134.

<sup>76</sup>Milo 27. <sup>77</sup>Milo 26, 44.

<sup>78</sup>A. E. E. L. 25. 281; compare 21. 222.

<sup>79</sup>Milo 26.

<sup>80</sup>Milo 27, 43. Clark suspects that Cicero may be using ambiguous language in both passages, in order to confuse dates, and make the haste of Clodius from Rome all the more remarkable. Asc., p. 49, mentions a *confio* on the 18th, but none on the 17th.

<sup>81</sup>Milo 28.

<sup>82</sup>Milo 53.

<sup>83</sup>Milo 28, 55.

<sup>84</sup>For this general line of reasoning compare A. E. E. L. 25. 279:

'It is competent for the accused to give in evidence any facts tending to show the character of the attack which he resisted, the intention with which it was made, and that he had reasonable grounds to believe that it was necessary, as a measure of prevention, to go to the extent he did in resisting.'

<sup>85</sup>Milo 29.

<sup>86</sup>Milo 29.

<sup>87</sup>A. E. E. L. 25. 266. Compare Milo 31.

<sup>88</sup>Milo 72-91.



be admitted that the introduction of this topic destroys somewhat the unity of the speech, and probably the plea would be more effective if Cicero had given his whole attention to the single argument. The case then went to the jury, and Milo was convicted by the large majority of 38 to 13 votes. The vote stood: for conviction, senators 12, equites 13, tribuni aerarii 13; for acquittal, senators 6, equites 4, tribuni aerarii 3<sup>99</sup>.

The evidence presented against Milo by the prosecution must have been very strong, but probably the real reason for his conviction lay in Cicero's failure to plead his case well. Cicero was ashamed of his failure, and shortly after the conviction of Milo wrote out in full what he had intended to say. Presumably we have the speech as he then wrote it. He sent a copy of it to Milo, who assured Cicero that he would not have been convicted, had Cicero delivered that speech<sup>100</sup>. The conclusion is that Milo regarded the speech as an adequate defense, and it is difficult to believe otherwise. On this question the only consideration that arises is whether Cicero is confining himself strictly to the truth in all that he says. If he is doing so, one can have no hesitation in holding that he proves his case absolutely. We have had occasion to notice two small points in which he may fall under suspicion of prevarication. It is sometimes held that the conviction was based largely on political grounds, and undoubtedly many thought that it would be desirable to have Milo out of the city. Nevertheless, one is forced to maintain that no jury could have convicted him if Cicero had presented the case as strongly as it appears in his extant speech.

The penalty placed upon Milo was banishment from Italy, with, possibly, the confiscation of his property. He immediately took up his residence at Massilia. There is no information given as to a time limit on the banishment, either in the law of Pompey, or in this case. It is probable that it was a life sentence, for it could not be less than the penalty for *ambitus*, which seems to have been banishment for life, according to Pompey's legislation. Caesar did not restore Milo among the many who were restored after banishment under these laws of Pompey. But he returned in 48 B. C., upon invitation of Caelius, to take part in the insurrection raised by Caelius.

DARTMOUTH COLLEGE.

R. W. HUSBAND.

## REVIEWS

*Bellum Helveticum: A Beginner's Book in Latin.* Revised Edition. By A. L. Janes and P. R. Jenks. Chicago: Scott, Foresman and Company (1913). Pp. 440.

Not very long ago makers of First Year Latin books thought and teachers demanded that the books should

be made as interesting as possible. The results obtained when the pupil tried to read Caesar were unsatisfactory, and gradually the pendulum swung the other way, until before the first year pupil in Latin was given a book so complex, abstruse and uninteresting that it was difficult even for an experienced teacher to use it successfully.

In the revised *Bellum Helveticum* a happy medium, we find, has been struck. The book is attractive and well printed; the illustrations are good; and, best of all, the arrangement is clear and logical.

As the title indicates, the book is based on the first twenty-nine chapters of the first book of Caesar's Commentaries. But, very wisely, before approaching the text of Caesar, the authors have given ten lessons on forms and simple principles of syntax. From the seventeenth lesson onward a small portion of Caesar's text is given in each lesson; 365 words most used by Caesar form the basis of the English sentences, a number which the average pupil can easily learn thoroughly and which will serve him as a reliable stock in trade for his Second Year work. The vocabulary of the body of the book contains 519 words in common use in Caesar. The sentences, both Latin and English, are well chosen and are not too numerous.

The Lessons, of which there are 90, contain exercises for written and oral work, which with the questions under the vocabularies serve admirably to set the pupil thinking.

The *Bellum* also contains eleven Review Lessons, which are excellent. The 90 Lessons contain the first 14 chapters of the Helvetian War; then follow chapters 15-29 with English exercises, containing review grammatical constructions. This is followed by the Connected Text of the Helvetian War, Selected Rules, and an Appendix which contains in small compass all the paradigms which have been given in the early lessons. A Latin-English Vocabulary and a short English-Latin Vocabulary complete the book.

With this revised *Bellum* goes a class-room edition which contains the exercises of each lesson which the pupil is to prepare, but no information; there are added sentences, called Sight Sentences, in both English and Latin, which may be used for additional drill and for sight work, if desired. This class-room edition is very valuable.

On the whole this revised edition is well put together, clear, and practical.

CURTIS HIGH SCHOOL, ANNEX,  
Port Richmond, N. Y.

FRANCIS E. BREWER.

*Athenian Clubs in Politics and Litigation.* A University of Chicago Dissertation. By George Miller Calhoun. Reprinted from the University of Texas Bulletin, No. 262 (January 8, 1913). Pp. 172.

The text on which this thesis builds is Thucydides 8.54.4, where, in the account of the growth of the oligarchic movement, Peisander is mentioned as having visited the 'sworn associations which already existed in the state for the management of lawsuits and elections'.

<sup>99</sup> Asc. 53.

<sup>100</sup> It is Dio Cassius (40. 54) who relates the story that Milo wrote to Cicero that he would have missed the mullets of Massilia, if Cicero had pleaded as well as that.

Though the investigation is but incidentally concerned with the origin or the history of the Clubs, the author devotes a brief chapter to a discussion of their development, their political tendencies, social features, and the details of organization, such as the bases of membership, forms of initiation, oaths and pledges and the bond of Club membership.

The primary intent of the study is to collect all available information upon the actual workings of the Clubs and to describe the precise methods by which they effected their purposes. This leads to a consideration of the actual instances of Club activity and an inquiry into the opportunities for intrigue and machination that were offered by the Athenian judicial and political machinery.

It becomes therefore an account of the tactics which hetaeries are known actually to have employed, and a study of practical political and legal methods as illustrated not only in cases which undoubtedly originated with hetaeries, but also in instances where no Clubs are mentioned but which notwithstanding illustrate more fully the ways in which hetaeries could work. Following out these premises one long chapter is devoted to The Clubs in Litigation and another to The Clubs in the Political Field. The volume concludes with a bibliography, index and register of passages.

Mr. Calhoun has made a very scholarly and important contribution to our knowledge of the political life of ancient Athens.

WASHINGTON, D. C.

MITCHELL CARROLL.

#### **DIVISION OF VISUAL INSTRUCTION: UNIVERSITY OF THE STATE OF NEW YORK**

The Division of Visual Instruction of the University of the State of New York has a limited number of slides on Italy and Greece which on certain conditions it stands ready to lend to Schools throughout the State of New York. In a letter dated February 1, 1915, Mr. Alfred W. Abrams, of the Division, writes that the list given in Catalogue I, issued by the Division, represents "the remnant of a much larger collection which we had prior to the Capitol fire in 1911. Since the destruction of our collection on that occasion, we have not rebuilt our collection in the fields you mention". It might be worth while for teachers of Latin and Greek throughout New York State, as well as for the Classical Associations within the State, to bring some pressure to bear upon the Division to rebuild its collection of slides bearing on Latin and Greek subjects. That the Division would not be unwilling to yield to such pressure is clearly evident from the fact that, as recently as December 15, 1914, the Division issued List 33 of slides and photographs which may be borrowed, dealing with "Baalbek (Heliopolis), the City of the Sun". The introductory page of the circular which presents this list points out that the mass of ruins at Baalbek enables one to form a good idea of the splendor and extra-

gance of the late Roman civilization and to understand what Roman occupation of a country meant. A handbook issued by the Division explains the terms on which the slides are lent. They are lent to schools, as I understand it, rather than to individuals. In the latter already quoted, Mr. Abrams sums up the terms of lending as follows:

You will note that we have two plans, a weekly period for ordinary lecture use and a monthly period for schools borrowing slides regularly for systematic classroom use. To a large number of our schools, we are sending regularly each month from two hundred to four hundred or five hundred slides for use by different teachers. So far as the schools are concerned, this is the plan which is growing in favor, and is especially recommended. There is no charge for the use of slides, the borrower paying transportation in both directions.

The list of slides of most interest to students of the Classics is Catalog I: Part B.

In a letter dated February 16 Mr. Abrams explains that the slides named in this list have been withdrawn from circulation, except when application is made through a public library. An accompanying circular explains as follows:

There are so few duplicate copies of the slides of Catalog I that with an ever increasing demand it has become impossible to fill satisfactorily applications for these slides even on the weekly plan of lending. . . . We are now undertaking to make negatives from such of the slides of Catalog I as seem to be of sufficient importance and of satisfactory quality. . . . When new negatives have thus been made and have been classified, slides can be multiplied to the extent necessary to fill all applications. . . . Larger appropriations and additional assistants are required if we are to meet the demand that is being made for these educational aids. It is proper that our borrowers should understand the situation. C. K.

#### **PHILADELPHIA SOCIETY FOR THE PROMOTION OF LIBERAL STUDIES**

The First Annual Meeting of the Philadelphia Society for the Promotion of Liberal Studies will be held at the Drexel Institute, Thirty-Second and Chestnut Streets, on Saturday, March 27. The programme is as follows:

11 A. M.: Address of Welcome, by Dr. Hollis Godfrey, President of Drexel Institute; Presidential Address, reviewing the work of the Society for the year, Professor Walter Dennison. 12 Noon: Address by Dr. Robert Ellis Thompson, Principal of the Central High School; Address by Principal Stanley R. Yarnall, of the Friends' School, Germantown, Why Should Boys and Girls Study Latin?

At 12.45 luncheon will come (50 cents per person).

At 2.00 P. M. there will be an address by Professor J. Duncan Spaeth, of Princeton University, Liberal Studies from the Standpoint of a Professor of English. At 2.30 Hon. Dimner Beeber, President of the Commonwealth Title Insurance and Trust Company, will speak on Liberal Studies in the Professional and Financial Worlds.

At 3 P. M. Professor D. M. Robinson will deliver an illustrated lecture, A Visit to Asia Minor.

Those who expect to be present at the luncheon are requested to notify Dr. G. D. Hadzsits, of the University of Pennsylvania, by March 25.

JESSIE E. ALLEN, Secretary.